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March 8, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 22, 2006

Case Number: TSO-0421

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter "the Individual") for continued access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should not be restored at this time.

I. FACTUAL BACKGROUND

The Individual has worked for a DOE contractor and held a security clearance for over fifteen years. In 2000, the Individual was involved in an alcohol-related domestic incident. The Local Security Office (LSO) interviewed the Individual, DOE Ex. 21, and referred him to a DOE consulting psychiatrist (DOE Psychiatrist 1). DOE Psychiatrist 1 interviewed the Individual but deferred a diagnosis until after laboratory tests were performed. DOE Exs. 10, 11. Laboratory tests were not performed and DOE Psychiatrist 1 never made a diagnosis.

In connection with a reinvestigation of his clearance, the Individual reported a 2004 citation for driving with an open container of alcohol. As a result, in 2005, the LSO conducted a personnel security interview of the Individual about his alcohol consumption. DOE Ex. 20. During this interview, the Individual reported that he began drinking in high school at weekend parties.

He gave 18 beers as the most he remembered drinking at a time. *Id.* at 12-13. He reported drinking on leave when he was in the military and then a "beer or two after work" when he left the military. *Id.* at 14-15. The Individual stated that on the weekends his consumption varied but that he could drink as many as eight or ten beers in the course of the day. *Id.* at 16. He indicated that he continues to consume beer after work: "I have some beer to relax after work and to get to sleep at night because I'm in a lot of pain most of the time." *Id.* at 18. He described the pain as associated with an occupational injury. *Id.* He also stated that his alcohol consumption varied with his "highs and lows" although he would not call the "lows" depression. *Id.* at 20. The Individual stated that the night before the interview he had four and one-half beers. *Id.* at 21. He stated that he had not drunk to excess in a while because his wife objects to it. *Id.* at 25.

The LSO referred the Individual to a DOE psychiatrist (DOE Psychiatrist 2), who interviewed the Individual and issued a report. DOE Ex. 9. The Individual reported a long history of drinking most nights after work - typically four or five beers. *Id.* at 5. The Individual reported that in early 2005 he reduced his consumption to about three beers a night, because of concerns about his blood pressure. *Id.* When asked how much he had consumed the night before the interview, the Individual stated three beers and a glass of wine. *Id.* The psychiatrist opined that the Individual had consumed alcohol habitually to excess and that his reduced consumption was not sufficient to resolve the concern. *Id.* at 9. The psychiatrist opined that the Individual needed one or two years of ongoing supportive counseling to help him maintain a significantly reduced level of consumption. *Id.*

In 2006, the DOE notified the Individual that his alcohol consumption raised a security concern under 10 C.F.R. § 710.8(j) (Criterion J, consuming alcohol habitually to excess). DOE Ex. 1 (Notification Letter). The Notification Letter cited the opinion of DOE Psychiatrist 2. The Notification Letter also mentioned the 2005 open container citation, the 2000 alcohol-related domestic incident, and the Individual's statements in the 2005 personnel security interview.

The Individual requested a hearing, and I was appointed to serve as the hearing officer. At the hearing, DOE Counsel presented one witness: DOE Psychiatrist 2. The Individual testified and presented one additional witness: his wife.

II. THE HEARING

A. The Individual

The Individual testified that he did not believe that his alcohol consumption has ever been a problem. Tr. at 40. He then discussed his alcohol use and related events.

The Individual did not dispute the 2004 open container citation. He stated that it was "in the late morning on a Saturday" and he had "just gotten off from work." *Id.* at 41. He stated that he "took a ride up in the hills and had a beer" and was stopped because his registration was expired. *Id.* The Individual testified that he was given the choice of citations and that he chose the open container citation based on the amount of the fine. *Id.*

The Individual described a history of drinking about four to five beers a night prior to 2005 and then cutting back to three beers, which he generally consumed between 5:00 and 8:00 P.M. on weekdays. Tr. at 46, 56. The Individual stated that he had cut back more in 2006 because "It's not good for me." *Id.* at 47. He acknowledged that, in the past, his wife had objected to his drinking. *Id.* When asked if he had a support system to help him control his drinking, he stated that his wife was his support system. *Id.* at 53.

The Individual testified that the only person who was familiar with his alcohol consumption was his wife. Tr. at 53-54. He stated that he and his wife do not socialize. *Id.* at 54. When asked about adult children, he stated that the adult child living with them was not home much. *Id.* at 54.

B. Individual's Wife

The Individual's wife testified that they have been married for 28 years. Tr. at 26. The Individual's wife stated that she did not see the Individual drink the amount that he reported to DOE Psychiatrist 2. *Id.* at 27. She stated that the Individual drank to excess sometimes, but that he did not drink every night and not to excess every night that he drank. *Id.* at 29. She defined excess as when the Individual gets "moodier." *Id.* When asked when she last saw him drink to excess she said "a couple of months ago." *Id.* She stated that it took three to four beers for the Individual to get to that point. *Id.*

The Individual's wife stated that she had seen a reduction in the Individual's drinking in the last several years, and that he no longer drinks daily. *Id.* at 32-33. She stated that in the past year or so, she had seen him drink several times a week - two or three beers at a time. *Id.* at 33. She stated that she did not think that he needed any treatment or help. *Id.* at 34.

I asked the Individual's wife how long a six-pack of beer would last. The Individual's wife stated that she was not certain: "Because he may have a friend come over. I mean, it depends on the circumstances." *Id.* at 39.

C. DOE Psychiatrist 2

DOE Psychiatrist 2 testified at the beginning of the hearing and, again, at the end of the hearing. The psychiatrist testified that the Individual's "alcohol use history is very significant." Tr. at 11. The psychiatrist discussed the alcohol history set out in his report and characterized it as "habitually to excess." *Id.* at 11-12. As for his current use, the psychiatrist testified that the Individual's consumption of three beers a night left the Individual "somewhat intoxicated every night." *Id.* at 14. Later the psychiatrist elaborated that the Individual's reported consumption of three beers between 5:00 and 8:00 P.M. every night would leave him "appearing kind of intoxicated." *Id.* at 65.

DOE Psychiatrist 2 testified that he viewed the Individual's reduction in his alcohol consumption as "some early evidence of reformation." Tr. at 14. The psychiatrist stated that he thought that the Individual's awareness of alcohol issues was "fairly minimal" and that the Individual needed some kind of program to move in the direction of containing "his tendency to drink habitually to excess." *Id.* at 15. The psychiatrist did not believe that the Individual needed to be abstinent. *Id.*

DOE Psychiatrist 2 commented on the use of alcohol to medicate pain or depression. He described it as ill-advised - "it is not going to help, it's probably going to lead to problems." Tr. at 19. The psychiatrist stated that, given the Individual's situation, adequate evidence of reformation and rehabilitation would be (i) not drinking every night and limiting consumption of three beers at a time to weekends, and (ii) a year or two of monitoring and counseling. *Id.* at 22-24.

III. APPLICABLE STANDARD

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the hearing officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the hearing officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *Id.* § 710.27(a).

IV. ANALYSIS

A. Whether the Individual Has Been a User of Alcohol Habitually to Excess

There is no question that the Individual has a long history of consumption of alcohol in large amounts. By his own report, in the period immediately prior to 2005, the Individual was consuming four or five beers every night after work and sometimes more on the weekend days. DOE Ex. 9 at 5. The Individual has also had two alcohol-related legal incidents. In 2000, he and his wife were involved in a domestic dispute after consuming alcohol; and in 2004, the Individual was cited for driving with an open container. Finally, over the years, the Individual's wife complained to him of excessive alcohol use. DOE Psychiatrist 2 opined that the Individual's report of reduced consumption in 2005 - three beers from 5:00 to 8:00 each week night - still leaves the Individual "somewhat intoxicated every night." Based on the foregoing, I have concluded that the Individual has been a user of alcohol habitually to excess. 10 C.F.R. §710.8(j).

B. Whether the Individual Has Demonstrated Adequate Evidence of Reformation and Rehabilitation

The DOE regulations do not specify what constitutes adequate evidence of reformation or rehabilitation. Accordingly, I look to adjudicative guidelines. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (the Adjudicative Guidelines). Guideline G gives examples of adequate evidence of reformation or rehabilitation from an alcohol-related problem. At a minimum, the Individual would have to establish a pattern of responsible use. Guideline G, ¶ 23.

Given that guideline, I now turn to the facts of the case. As explained below, I cannot conclude that the Individual has established a pattern of responsible use.

The Individual did not bring forward testimony giving a clear picture of his alcohol consumption over the last two years. In his October 2005 interview with DOE Psychiatrist 2, the Individual reported that in early 2005, he reduced his alcohol consumption to three beers a day. DOE Ex. 9 at 5. Yet, when the psychiatrist asked him what he had to drink the night before the interview, the Individual reported three beers and a glass of wine. *Id.* As for the Individual's wife, she was unaware of the level of consumption that the Individual reported to the psychiatrist. Tr. at 27. The Individual maintained that no one else was knowledgeable about his level of alcohol consumption, *id.* at 53-54, but the record indicates that other potential witnesses existed, including an adult child living in his house, *id.* at 54, the visiting friend or friends referred to by the wife, *id.* at 39, and parents who live a few blocks away, DOE Ex. 9 at 3.

It is undisputed that the Individual has not had any professional support. Although the Individual states that his wife is his support, *id.* at 53, I am not persuaded that her support is sufficient. The Individual's wife lacks familiarity with his level of consumption, and the Individual did not discuss with her his reported decision to reduce his consumption. Given these facts, I agree with the psychiatrist's opinion that the wife's support is insufficient and that some type of program is needed. See *id.* at 34.

As the foregoing indicates, the Individual has not demonstrated a pattern of responsible alcohol use or the type of education or

counseling that would help sustain such a pattern. Accordingly, the Individual has not shown adequate evidence of reformation and rehabilitation.

V. CONCLUSION

The Individual has not resolved the Criterion J concern set forth in the Notification Letter. Therefore, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at *Id.* § 710.28.

Janet N. Freimuth
Hearing Officer
Office of Hearings and Appeals

Date: March 8, 2007